REMARKS

Claims 1, 2, 4-36, 38 and 41-75 are currently pending in the subject application and are presently under consideration. The below comments present in greater detail distinctive features of applicants' claimed invention that go beyond mere manipulation of abstract ideas to produce a concrete, tangible and useful result that were conveyed to the Examiner over the telephone on June 14, 2007.

Favorable reconsideration of the subject patent application is respectfully requested in view of the comments herein.

I. Rejection of Claims 1, 2, 4-36, 38, and 41-76 Under 35 U.S.C. §101

Claims 1, 2, 4-36, 38, and 41-76 stand rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. It is respectfully submitted that this rejection is improper for at least the following reasons. The subject claims recite statutory subject matter as defined by 35 U.S.C. § 101 and relate to practical applications.

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

and

> Because the claimed process applies the Boolean principle ***to produce a useful, concrete, tangible result*** … on its face the claimed process comfortably falls within the scope of §101. *AT&T Corp. v. Excel Communications, Inc.*, 172 F.3d 1352, 1358 (Fed.Cir. 1999). The inquiry into patentability requires an examination of the contested claims to see if the claimed subject matter, as a whole, is a disembodied mathematical concept representing nothing more than a "law of nature" or an "abstract idea," or if the mathematical concept has been ***reduced to some practical application rendering it "useful."*** *AT&T* at 1357 *citing In re Alappat*, 33 F.3d 1526, 31 1544, 31 U.S.P.Q.2D (BNA) 1545, 1557 (Fed. Cir. 1994).

The subject application relates to cluster-based and rule based approaches for targeted advertising with quotas. Advertisers utilize ads (*e.g.,* banner ads, house ads, targeted advertising) to advertise or make something known, such as a product, service, event and so forth. (*See e.g.,* pg. 1, lns. 11-15; pg. 2, lns. 4-6; pg. 11, lns. 5-14; and pg. 17, lns. 5-9). The Final Office Action states "Examiner is not of the opinion that a pure 'advertisement' is not 'useful, concrete and tangible' … and is not a 'substance'." However, it is then asserted, based on a dictionary definition of "advertisement" that:

> "A mere 'notice' is not tangible. It is not a 'substance' and it need not involve any commerce. It is mere data display. As such, it is abstract and pure manipulations of 'ads' are likewise, abstract ideas."

The purpose or *usefulness* of an ad is to draw the public's attention to something and is more than "mere data display", as asserted. The decision whether to act on the ad (*e.g.,* involve commerce) is entirely left to the consumer, who can become educated or aware of something through ads. Thus, an ad is tangible, useful and concrete (*e.g.,* perceived and attention is drawn to something).

Assuming *arguendo* that "ads" are abstract ideas, the subject claims go beyond mere manipulation of abstract items and a person of ordinary skill in the relevant art would appreciate the usefulness of the subject claims. Specific and substantial utilities of the subject claims relate to maximizing a click through rate for ads given a quota, allowing web site operators to maximize earning potential from advertising, adhering to various obligations relating to advertising within certain clusters (*e.g.,* adult-oriented ad might not be desired to be shown in a children-oriented cluster), as well as other utilities. (*See e.g.,* pg. 3, ln. 13 to pg. 4, ln. 4). In addition, some advertisers can be favored over other advertisers for various reasons. (*See e.g.,* pg. 16, lns. 18-20). The ad can be effected, which can include displaying the ad or displaying a button on a web site for immediate purchase of an item. (*See e.g.,* pg. 11, ln. 18 to pg. 12, ln. 3 and pg. 28, lns. 10-14). Effecting the ad can also relate to maximizing a possibility that a user will purchase something, "not just click on the ad." (*See e.g.,* pg. 18, lns. 16-17). Thus, the subject claims produce a useful, tangible and concrete result for both an advertiser and a

web site operator in order to maximize an earning potential from advertising. (*See e.g.,* pg. 3, lns. 17-19).

Based on at least the foregoing, it is apparent that the subject claims recite a practical application, go beyond mere manipulation of abstract ideas and produce a concrete, tangible and useful result. Accordingly, this rejection should be withdrawn and the subject claims allowed.

II. Rejection of Claims 1, 2, 4-36, 38, and 41-76 Under 35 U.S.C. §112

Claims 1, 2, 4-36, 38, and 41-76 stand rejected under 35 U.S.C. §112, first paragraph because current case law and the MPEP require such a rejection if a §101 rejection is given. This rejection should be withdrawn for at least the following reasons. As discussed above, the subject claims disclose a practical application that produces a concrete, tangible and useful result and go beyond manipulation of abstract ideas. As such, the subject claims recite statutory subject matter as defined by 35 U.S.C. § 101. Accordingly, this rejection should be withdrawn and the subject claims allowed.

III. Rejection of Claims 1 and 2 Under 35 U.S.C. §102(e)

Claims 1 and 2 stand rejected under 35 U.S.C. §102(e) as being anticipated by Ballard (U.S. 6,182,050). This rejection should be withdrawn for at least the following reason. Ballard does not teach or suggest all limitations recited in the subject claims.

> "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ 2d 1051, 10 recite statutory subject matter as defined by 35 U.S.C. § 101 53 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the…claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 9 USPQ 2d 1913, 1920 (Fed. Cir. 1989).

Independent claim 1, recites *a computer-implemented method comprising* ***allocating each of a plurality of ads to at least one of a plurality of clusters,*** *based on a predetermined criterion* ***accounting for at least a quota for each ad and a constraint for***

***each cluster**, selecting an ad for a current cluster from ads allocated to the current cluster and effecting the ad.* For example, the quota for each ad and the constraint for each cluster can be used to maximize a number of click through for all the ads, given the quotas and constraints. (*See e.g.,* pg. 15, lns. 8-11). Ballard does not disclosure such novel features.

Ballard relates to advertisement distribution *based on demographic data*. (*See e.g.,* col. 9, lns. 39-48). Demographics are characteristics of human populations and population segments and can include hobbies, interest, credit history, travel history and past purchasing history. (*See e.g.,* col. 1, lns. 21-33 and col. 7, lns. 3-13). However, Ballard fails to teach or even suggest accounting for at least a quota for each ad and a constraint for each cluster, as claimed.

Based on at least the above, Ballard does not teach or suggest all limitations recited in the subject claims. Accordingly, this rejection should be withdrawn and the subject claims allowed.

CONCLUSION

The present application is believed to be in condition for allowance in view of the above comments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063 [MSFTP222USB].

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicants' undersigned representative at the telephone number below.

Respectfully submitted,

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